



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 07-0010

IN THE MATTER OF SHARON POLLARD

DISPOSITION AGREEMENT

The State Ethics Commission and Sharon Pollard enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Pollard. The Commission concluded its inquiry and on January 24, 2007, found reasonable cause to believe that Pollard violated G.L. c. 268A.

The Commission and Pollard now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Pollard was the mayor of the City of Methuen ("the City") from January 2000 until January 2006.
2. Pollard is a founder and one of fifteen corporate directors of the non-profit Methuen Festival of Trees, Inc. ("the Festival"). The Festival is a private, non-profit 501(c)(3) corporation. The Festival's purpose, as stated in its December 31, 2002 articles of organization, is to "raise awareness and funds to benefit historic preservation in the city of Methuen, MA." The Festival engages in fundraising and has spent most of these funds on restoring stone walls located in the city's central historic district.
3. In the spring of 1999, before Pollard was mayor, Osco Drug approached the City with a proposal to build a retail store on property owned by Osco Drug on Howe Street. As part of its proposal, Osco Drug offered to pay the city \$650,000 to mitigate any traffic problems created by the store. The City turned down the proposal.
4. In early 2004, Brooks Pharmacy, which had recently acquired Osco Drug, approached the City again about the proposed Howe Street project. Brooks Pharmacy renewed the offer to make a \$650,000 traffic mitigation payment.
5. At its June 23, 2004 meeting, the Methuen Community Development Board voted to approve the Brooks Pharmacy site plan application with a condition that Brooks Pharmacy pay the \$650,000 mitigation fee to the City.
6. A few weeks later, Pollard as mayor, acting through her staff, instructed Brooks Pharmacy to write two separate checks; one \$450,000 check payable to the City and another \$200,000 check payable to the Festival.

7. At the Festival's July 20, 2004 board of directors meeting, Pollard announced to the board that Brooks Pharmacy would be giving a check to the Festival for \$200,000 for "wall restoration."

8. On August 27, 2004, Brooks Pharmacy provided two checks; one for \$450,000 to the City and another for \$200,000 to the Festival.

9. At its September 20, 2004 meeting, the Methuen City Council formally accepted the \$450,000 payment from Brooks Pharmacy, which Pollard described as "a gift to the city." When asked by a councilor to clarify, Pollard stated that the money could be "expended for any purpose at the city's discretion." Pollard suggested various improvements to parks, playing fields, and other property owned by the City. Pollard made no mention of the \$200,000 payment she had arranged for the Festival.

10. In spring 2005, questions arose in the Methuen City Council about the \$200,000 in Brooks Pharmacy mitigation funds given to the Festival. On May 2, 2005, Pollard appeared before the Council and answered those questions.

11. On June 24, 2005, the Festival gave the City a check for \$200,000, thereby redirecting the Brooks Pharmacy mitigation funds it had received.

12. Pollard testified that her decision to provide the Festival with \$200,000 of the Brooks Pharmacy mitigation funds was with the City's best interest in mind. Pollard believed that the City had already addressed traffic issues in the area and therefore the funds should go to a variety of civic projects, including wall restoration. Notwithstanding Pollard's testimony, until June 24, 2005, Pollard's unilateral decision prevented the City from deciding how best to use the mitigation funds and making her the only City official involved in deciding how the \$200,000 should be spent. Thereafter, other City officials participated in the decision.

Conclusions of Law

13. As the City mayor, Pollard was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

14. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

15. Receipt of the \$200,000 in Brooks Pharmacy mitigation funds was a privilege.

16. Since the Methuen Community Development Board vote concerning Brooks Pharmacy's application was conditioned on payment of \$650,000 to the City, the \$200,000 payment to the Festival (a private entity), was an unwarranted privilege.

17. The Festival's receipt of \$200,000 in Brooks Pharmacy mitigation funds was an unwarranted privilege of substantial value.

18. By instructing Brooks Pharmacy to give \$200,000 in mitigation funds to the Festival, Pollard knew that she was using her mayoral position to provide the Festival with an unwarranted privilege.

19. The unwarranted privilege was not otherwise properly available to similarly situated individuals.

20. Therefore, as mayor by instructing Brooks Pharmacy to give \$200,000 in mitigation funds to the Festival, Pollard knowingly used her official position to secure for the Festival an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating § 23(b) (2).

Section 23(b)(3)

21. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection further provides that the appearance of impropriety can be avoided if an elected public employee publicly discloses all of the relevant circumstances which would otherwise create the appearance of conflict of interest.

22. Pollard acted as mayor in the matter of the distribution of the Brooks Pharmacy mitigation funds by instructing Brooks Pharmacy to pay \$200,000 in the mitigation funds to the Festival and \$450,000 to the City.

23. When she so acted in this matter, Pollard was a Festival founder and corporate director. Consequently, by acting as mayor on a matter in which a private organization (with which she had a significant private relationship) had a substantial financial interest, Pollard knew that she was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that the Festival could improperly influence or unduly enjoy Pollard's favor in the performance of Pollard's official duties as mayor relating to the Brooks Pharmacy mitigation funds. Thus, Pollard violated § 23(b)(3). This appearance of impropriety was exacerbated by Pollard not notifying the City Council of the \$200,000 payment or obtaining the City Council's consent of the payment to the Festival.

24. Pollard did not make any public disclosure of the relevant facts to dispel this appearance of impropriety.

Resolution

In view of the foregoing violations of G.L. c. 268A by Pollard, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Pollard:

(1) that Pollard pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2) as noted above;

(2) that Pollard pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(3) as noted above;

(3) that Pollard waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 26, 2007